



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Alternate Power and Energy Corporation

File: B-228746

Date: November 3, 1987

DIGEST

1. Where an invitation for bids requires the submission of descriptive literature to establish conformance of the product offered with the material specifications of the solicitation, a bid must be rejected as nonresponsive if the literature submitted does not address, or evidence conformity with, the specifications.

2. Agency reasonably determined that bidder's descriptive literature demonstrates conformance to the technical requirements of the solicitation where literature explicitly provides that product meets requirement at issue.

DECISION

Alternate Power and Energy Corporation protests the rejection of its low bid as nonresponsive and the award of a contract to Rosen's Electrical Equipment Co. for a motor generator set under invitation for bids (IFB) No. 429A-87-B-0184 issued by the Naval Air Station (Navy), Point Mugu, California. The Navy rejected Alternate's bid for failure to provide necessary descriptive literature. Alternate argues that its bid shows compliance with the solicitation specifications. Alternate also argues that Rosen's bid failed to show compliance with the IFB requirements.

We deny the protest.

The IFB set forth certain specifications that the offered equipment had to meet and stated that bidders were required to submit descriptive literature with their bids to demonstrate compliance with these specifications. Bidders were advised that the literature would be used for technical evaluation and were cautioned that failure of the literature to show compliance would require rejection of the bid.

Twelve bids were received at the April 14, 1987, bid opening. The Navy rejected Alternate's low bid because the

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included descriptive literature did not address an IFB requirement for which bidders were required to show compliance in their descriptive literature. Specifically, the literature submitted with Alternate's bid did not address an IFB specification which required that "radiated and conducted noise levels be below the specified levels in the military standard MIL-STD-461A."

Alternate responds that the regulator offered by the firm is "specially" modified to meet the noise level requirements in MIL-STD-461A. Alternate's literature states that the firm is offering the Alternate Power and Energy Corporation KCR 360 regulator "special." The protester maintains that by not taking exception to the solicitation noise level requirement in its bid, the firm is bound to supply a product which meets the solicitation specifications. The protester contends that the "crux of the problem in this case is the Navy engineering department's faulty familiarity" with the regulator offered by Alternate, and that there is "traceable proof" (including the information contained in the manufacturer's brochure) that shows that the equipment offered by Alternate meets the solicitation requirement in question.

A bid is responsive when it represents an unequivocal offer to provide the requested items in conformance with the material terms of an IFB. Morey Machinery, Inc., B-225367, Dec. 12, 1986, 86-2 C.P.D. ¶ 672. Responsiveness must be determined at the time of bid opening on the basis of the bid as submitted. Morey Machinery, Inc., B-225367, supra; DeVac, Inc., B-224348.2, Sept. 3, 1986, 86-2 C.P.D. ¶ 254. Where, as here, descriptive literature is required to establish conformance with the specifications and bidders are cautioned that nonconformance will cause the bid's rejection, the bid must be rejected as nonresponsive if the literature submitted fails to show clearly that the offered product complies with the specifications. Morey Machinery, Inc., B-225367, supra. Thus, even if the offered product, in fact, possesses the required features, bid rejection is required when the literature submitted with the bid does not clearly show conformance with the requirements. DeVac, Inc., B-224348.2, supra. We will not disturb the agency's determination concerning the adequacy of the required descriptive literature absent a clear showing of unreasonableness, abuse of discretion, or a violation of procurement statutes and regulations. Id.

Here, we cannot object to the agency's determination that the descriptive literature submitted with Alternate's bid failed to show that the equipment offered satisfied the noise level requirements specified in the IFB. The literature submitted with Alternate's bid does not address this

requirement. The protester argues that it offered a voltage regulator which was "specially" modified to meet the noise level requirements specified in the IFB. However, the statement in the firm's literature that it was offering the KCR 360 regulator "special" does not indicate that the regulator offered was modified, or how, to meet the solicitation noise level specifications. The literature submitted with Alternate's bid contains no explanation of the firm's intent to provide a modified product or other information from which the Navy could determine compliance with the noise level specifications.

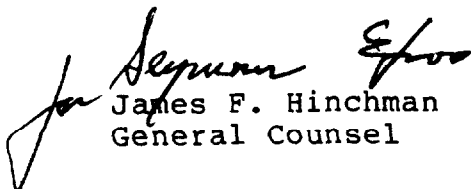
While Alternate argues that the product manufacturer's brochure indicates that noise levels are "suppressed" and contains a chart showing noise levels below those specified, the brochure was not submitted with Alternate's bid. We will not object to a contracting agency's consideration after bid opening of descriptive data in existence before that date which specifically references the model number offered; however, the agency has no obligation to go to the bidder after the bid opening date to obtain descriptive data on the bidder's product. Performance Controls Inc., B-224432, Oct. 7, 1986, 86-2 C.P.D. ¶ 405; Pure Air Filter International, et al., 56 Comp. Gen. 608 (1977), 77-1 C.P.D. ¶ 342. The protester's post bid opening statement that its product complies with the solicitation requirements is of no consequence because a nonresponsive bid may not be cured by explanations offered after bid opening. DeVac, Inc., B-224348.2, supra.

Finally, Alternate argues that Rosen's bid failed to specify under the "voltage regulator" section of its literature that its product meets the noise level requirements. In this regard, the protester states that the "noise level problem is in the regulation of the unit" and that Rosen's bid only indicates compliance with this requirement under the general heading "motor generators."

The IFB specification requires that the radiated and conducted noise levels be below those levels specified in MIL-STD-461A. Rosen's literature clearly states that in compliance with this specification, noise levels are below those specified in MIL-STD-461A. Thus, the Navy reasonably

determined that Rosen's bid showed compliance with this solicitation specification. See Thermal Reduction Co. Inc., B-211405, Aug. 8, 1983, 83-2 C.P.D. ¶ 180.

The protest is denied.

James F. Hinchman
General Counsel